
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. **R.S.A. No. 945 of 2004**
Date of decision: 4.10.2007

Sukhwinder Singh **Appellant**

Versus

Hari Singh **Respondent**

2. **R.S.A. No. 3571 of 2004**

Hari Singh **Appellant**

Versus

Sukhwinder Singh **Respondent**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. K. L. Dhawan, Advocate for the appellant.

Mr. Sandeep Khunger, Advocate for the respondent

RAJESH BINDAL, J.

This order will dispose of two appeals, namely, Regular Second Appeals No. 945 and 3571 of 2004, which arise out of the common judgment and decree passed by the Courts below.

The claim made in the suit filed by one Hari Singh against Sukhwinder Singh was for possession through specific performance of the agreement to sell dated November 9, 1999 executed by Sukhwinder Singh-defendant in favour of Hari Singh plaintiff to sell the land measuring 26 kanals and in the alternative for grant of decree for recovery of Rs. 4,38,000/- i.e. Rs. 3,52,000/-as earnest money and Rs. 85,000/- as damages on account of breach of terms and conditions of the agreement to sell alongwith interest was prayed for.

On consideration of the evidence on record, learned Courts below found that in fact the agreement to sell was executed by Sukhwinder Singh in favour of Hari Singh only as a measure of security for refund of the

amount advanced by him. Infact the claim made by Hari Singh that possession of the land was delivered to him after execution of the agreement to sell also did not find favour with the Courts below for the reasons that possession of the land was still found to be with Sukhwinder Singh. It had also come on record that Hari Singh in routine was advancing loans to various persons and as a security he used to get agreement to sell the land executed in his favour, which were never enforced as the same were only to secure the payment of the loans granted. During his cross examination, he had admitted that various such agreements to sell, where the suits for specific performance filed were ultimately withdrawn after the amount was paid. It was also found that in another agreement Ex. P-X executed by Sukhwinder Singh in favour of Hari Singh on November 9, 1999, there was a specific recital that if the vendor would return the earnest money, the sale deed on the basis thereof will not be executed. Execution of the agreement has been duly proved. It was under these circumstances, it was opined that agreement to sell was nothing more than a security for the loan advanced. Once it is found that intention of the parties was not to enforce the agreement to sell, learned Courts below correctly directed for refund of the earnest money of Rs. 3,52,000/- alongwith interest at the rate of 12% per annum. Even before this Court, learned counsel for the parties could not address any convincing argument, which could lead to the conclusion that the findings arrived at by both the Courts below are not supported by evidence on record.

I do not find any substantial questions of law arise in the present appeal. The findings recorded are plain and simple findings of fact.

Accordingly, the appeals are dismissed.

October 04, 2007
Pka

(Rajesh Bindal)
Judge
